

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)**Statement of Regulatory Priorities**

The Equal Employment Opportunity Commission (EEOC) enforces six statutes prohibiting discrimination in employment. Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination on the basis of race, color, sex, religion, or national origin. The Equal Pay Act of 1963, as amended, prohibits the payment of different wages to women and men working in the same establishment, performing equal work that requires equal skill, effort, and responsibility under similar working conditions, unless the pay differential is based on factor(s) other than sex. The Age Discrimination in Employment Act of 1967, as amended (ADEA), prohibits employment discrimination on the basis of age against people age 40 and older. Title I of the Americans with Disabilities Act of 1990, as amended (ADA), prohibits employment discrimination against qualified individuals with disabilities. Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, prohibit Federal agencies from discrimination in employment against qualified individuals with disabilities and require agencies to accommodate the special needs of persons with disabilities. The Government Employee Rights Act of 1991 extends protections against employment discrimination to certain employees who were not previously covered.

The mission of the agency is to ensure equality of opportunity by vigorously enforcing Federal legislation prohibiting discrimination in employment. Enforcement is accomplished through investigation, conciliation, alternative methods of dispute resolution, litigation, coordination, and regulation, as well as by education, policy research, and technical assistance. In pursuing its mission of eradicating discrimination in the workplace, the Commission intends that its enforcement be certain and predictable, and that its remedies be preventive and remedial in scope.

One important step toward these ends is to make sure that employees, employers, and union representatives understand their rights and obligations under the Federal laws prohibiting employment discrimination. In accordance with the President's national regulatory principles, EEOC develops regulations necessary to inform employees and employers of their rights and obligations under the statutes it

enforces. EEOC further educates the public on an ongoing and proactive basis, through interpretive guidelines, policy documents, management directives, and other public guidance programs.

EEOC is currently considering several significant actions of a regulatory nature, which would be published for public comment. The Commission is considering issuing guidelines on the requirements of title I of the ADA in the context of employer provided health insurance. Clear and comprehensive guidelines will reduce confusion and uncertainty on the part of insurers, employers, and individuals with disabilities as to the application of the ADA to various health insurance provisions and practices. In addition to helping employers understand the scope of their nondiscrimination responsibilities and ensuring that individuals with disabilities are protected from prohibited discrimination, these guidelines will provide a source of guidance for the courts, thus helping to ensure uniform enforcement of the ADA.

The Commission is also considering issuing regulatory guidance on title II of the Older Workers Benefit Protection Act of 1990, which amended the ADEA to permit knowing and voluntary unsupervised waivers of rights and claims arising under the Act. Representatives of both the employer and employee communities have strongly demonstrated their interest in the issuance of additional guidance in this area. As part of the development of a regulation on waivers under the ADEA, the Commission is planning to engage in a regulatory negotiation to seek to obtain a consensus recommendation to the Commission.

Finally, the Commission is presently reviewing its position on apprenticeship programs under the ADEA. The current interpretive guideline holds that age limitations for entry into bona fide apprenticeship programs are not affected by the ADEA. Due to changing circumstances in the work force and structural changes in the workplace, the Commission is reviewing its interpretation to determine whether it is required by the language of the statute and to assess whether it represents sound policy under today's conditions.

(Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chairman of the agency. The statement has not been reviewed or approved by the other members of the Commission.)

EEOC**PROPOSED RULE STAGE****133. GUIDELINES ON THE APPLICATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 TO EMPLOYER PROVIDED HEALTH INSURANCE****Priority:**

Other Significant

Legal Authority:

42 USC 12111 et seq

CFR Citation:

29 CFR 1631

Legal Deadline:

None

Abstract:

The Commission proposes to issue guidelines to explain how the Americans with Disabilities Act (ADA) applies to employer provided health insurance plans. The guidelines will reexamine the issues addressed in the Commission's "Interim Enforcement Guidance on the Application of the ADA to Disability-Based Distinctions in Employer Provided Health Insurance," issued on June 8, 1993. The guidelines will also address a number of issues that were not addressed in either the Interim Enforcement Guidance or in the Commission regulations implementing title I of the ADA, including the ADA's application to corporate "wellness" programs. The proposed guidelines will be published for public comment. After consideration of the comments, the Commission will issue final guidelines.

Statement of Need:

Title I of the ADA prohibits employers with 15 or more employees from discriminating on the basis of disability in the provision of fringe benefits, including employer provided health insurance. Title V of the ADA, as applied to title I, permits employers, insurers, and plan administrators to continue to establish or observe the terms of health insurance plans, engage in risk-based underwriting, and/or use risk assessment, risk classification, or other traditional insurance practices, so long as these practices are not used as a subterfuge to evade the purposes of the ADA, 42 USC 12201(c).

Neither the statute nor its legislative history defines the term "subterfuge" or explains the application of that term to specific insurance practices or

provisions. This has given rise to confusion and uncertainty on the part of insurers, employers, and individuals with disabilities, as to the requirements of the ADA in the context of employer provided health insurance. The guidelines are necessary to alleviate this confusion and uncertainty, thereby reducing potential employment discrimination and/or litigation that is based upon a misunderstanding of the law.

Summary of the Legal Basis:

The legal basis of authority for these guidelines is set forth above in Legal Authority. No aspect of this regulatory action is required by statute or court order.

Alternatives:

After careful consideration, the Commission has determined that the issuance of these guidelines is the most efficient and effective way to clarify the application of the ADA to employer provided health insurance, and to ensure uniform enforcement of the ADA in this area.

Anticipated Costs and Benefits:

Clear and comprehensive guidelines will reduce confusion and uncertainty on the part of insurers, employers, and individuals with disabilities as to the application of the ADA to various health insurance provisions and practices. This will help ensure that individuals with disabilities are protected from prohibited discrimination, and that employers understand the scope of their nondiscrimination responsibilities under the law. These guidelines will also assist courts confronting these issues to ensure uniform enforcement of the ADA.

Risks:

In the absence of these guidelines, confusion and uncertainty with respect to the application of the ADA to various health insurance provisions and practices may result in prohibited employment discrimination against individuals with disabilities. Such confusion and uncertainty may also result in unnecessary apprehension on the part of employers as to the legality of actions they may take to better manage and contain escalating health care costs.

Timetable:

Action	Date	FR Cite
NPRM	09/00/96	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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EEOC

134. REGULATIONS INTERPRETING TITLE II OF THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990 (OWBPA)

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625

Legal Deadline:

None

Abstract:

The Age Discrimination in Employment Act of 1967 (ADEA) was amended in 1990 by OWBPA. Title II of OWBPA sets forth the statutory requirements for a valid waiver of rights under the ADEA.

Regulations under title II would provide guidance on implementing OWBPA's requirements for unsupervised ADEA waivers. As part of the development of this regulation, the Commission will engage in a regulatory negotiation on waivers of rights and claims under the ADEA.

Statement of Need:

In 1990, Congress amended the ADEA to permit knowing and voluntary unsupervised waivers of rights and claims arising under the Act. In 1992, the Commission published a notice in the Federal Register seeking public comment on various ADEA issues, including the topic of waiver agreements. In response to the notice the Commission received numerous detailed comments on the waivers provisions which demonstrated a need for regulatory guidance. Over the

ensuing years, representatives of employer and employee communities have expressed a continuing interest in receiving such guidance. Waiver agreements are widely used in the workplace, particularly when employers find it necessary to reduce the size of the workforce. Employees who sign waiver agreements are bargaining away important Federal rights in return for some form of consideration. Employers are offering additional benefits, sometimes quite substantial, in exchange for employee agreements to forgo potential recovery in age discrimination lawsuits. Both sides have a substantial stake in this area of the law and would benefit from regulatory guidance.

Summary of the Legal Basis:

Section 9 of the ADEA authorizes the Commission to issue such rules and regulations as it may consider necessary or appropriate for carrying out the Act. Moreover, regulatory negotiation is authorized by the Negotiated Rulemaking Act of 1990, and is consistent with the President's goal of involving stakeholders in the regulatory process.

Alternatives:

The objective of a regulatory negotiation is to seek to obtain a consensus recommendation to the Commission. Thus, the process itself will involve consideration of various alternatives with the affected parties agreeing upon proposed regulatory positions that best serve the public interest.

Anticipated Costs and Benefits:

Clear regulatory guidance for the use of waiver agreements should lead to increased voluntary resolution of potential employment disputes, which in turn will reduce the possibility of protracted and costly litigation. At the same time, providing clear regulatory guidance on what constitutes a valid waiver agreement will ensure that persons enter into such agreements only in a knowing and voluntary manner. It is not anticipated that any costs will arise from issuing regulatory guidance.

Risks:

Regulatory guidance for drafting and implementing valid waiver agreements will lessen the risk that persons might waive important Federal civil rights in an unknowing or involuntary manner. The Commission has a substantial interest in addressing this risk. The ADEA is intended to implement the

strong public interest in attaining a workplace free of age discrimination. Individual employees serving as private attorneys general are an integral part of the ADEA enforcement scheme crafted by Congress. Thus, it is of critical import that persons who may choose to relinquish their Federal civil rights do so voluntarily and with full knowledge. Moreover, other Federal civil rights laws enforced by the Commission, for example Title VII, envision an important role for aggrieved individuals as private attorneys general. Insofar as waiver agreements may be used under statutes other than the ADEA, clear guidance will also lessen the risk of abuse in those areas.

Timetable:

Action	Date	FR Cite
ANPRM	03/27/92	57 FR 10626
ANPRM Comment Period End	07/27/92	57 FR 10626
NPRM	09/00/96	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 3046-AA58

EEOC

135. INTERPRETATION RELATING TO APPRENTICESHIP PROGRAMS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625.13

Legal Deadline:

None

Abstract:

The current interpretive regulation at 29 CFR 1625.13 is being reconsidered to determine if any revision or modification is appropriate.

Statement of Need:

The Age Discrimination in Employment Act is intended, in part, to promote the employment of older workers based on ability rather than age, and to assist employers and workers in meeting problems arising from the impact of age on employment. As the agency charged with ADEA enforcement responsibility, the Commission has the authority to undertake research with a view to reducing barriers to the employment of older persons. It also has the authority to review periodically its interpretive regulations in light of applicable law and policy. The existing Commission interpretation holds that age limitations for entry into bona fide apprenticeship programs are not affected by the Act. Due to changing circumstances in the workforce and structural changes in the workplace, the Commission has decided to review its interpretation to determine whether it is required by the language of the Act and to assess the policy considerations involved, that is, to determine whether the interpretation implements sound policy under present-day conditions.

Summary of the Legal Basis:

Section 9 of the ADEA and 5 U.S.C. 301 authorize the Commission to issue such rules and regulations as it may consider necessary or appropriate for carrying out the Act. Moreover, an agency charged with furtherance of the public interest is not bound to a rigid adherence to prior positions. *Columbia Broadcasting System v. FCC*, 454 F.2d 1018, 1026 (D.C. Cir. 1971).

Alternatives:

The Commission is seeking public comment for the purpose of assessing the soundness of the present interpretation as a matter of both law and policy. Thus, at the conclusion of the process, the Commission could decide to retain the present interpretation, rescind the present interpretation, or rescind and replace the present interpretation.

Anticipated Costs and Benefits:

As noted above, one possible course of action would be for EEOC to change its interpretation to state that the ADEA applies to apprenticeship programs. Anticipated benefits from such a

change would be a potential increase in training and employment opportunities for persons age 40 and older, an increase in the number of skilled workers, a more efficient and competitive business sector, an enlarged tax base, and a reduction in the cost of various social programs tied to unemployment. The anticipated costs of the change are minimal. However, it has been argued that the change will increase the costs of running apprenticeship programs due to older apprentices leaving the workforce before program sponsors realize sufficient returns on their training investment. It has been further argued that this increase in costs will result in the discontinuation of some apprenticeship programs and in an overall reduction in the number of apprenticeship opportunities. The Commission will carefully assess such arguments after receiving public comment.

Risks:

Under the ADEA, an employer who acts in good faith, in conformity with, and in reliance on any written interpretation of the Commission is insulated from liability. Although a reassessment is entirely a matter of agency discretion, the risk of not conducting a reassessment is that the present interpretation could unduly limit opportunities for job mobility and/or for persons to reenter the workforce.

Timetable:

Action	Date	FR Cite
NPRM	10/03/95	60 FR 51762
NPRM Comment Period End	12/04/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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